Supreme Court, U.S.
FILED
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OFFICE OF THE CLERK

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 2001

BRENDA G.TAYLOR,

Petitioner,

v.

JAMES W. HODGES,
GENE BUINGER, and
BIBB COUNTY PUBLIC SCHOOLS,

Respondents.

PETITION FOR WRIT OF CERTIORARI
IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

BRENDA G. TAYLOR
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Suite 9
Jonesboro, Ga.30236
(770) 478-3555

22 pp

QUESTION PRESENTED

The trial court's jury charge on quid pro quo and hostile environment sexual harassment was contrary to this Court's decisions in Oncale v. Sundowner Offshore Services, Inc., Meritor Savings Bank v. Vinson, and Faragher v. City of Boca Raton.

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1. The trial court's jury charge on quid pro quo and hostile environment sexual harassment was contrary to this Court's decisions in Oncale v. Sundowner Offshore Services, Inc., Meritor Savings Bank v. Vinson, and Faragher v. City of Boca Raton

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OPINIONS BELOW

The judgment of the appellate court was entered on July 24, 2001, Appendix B. The order denying the petition for rehearing in banc was entered on October 5, 2001, Appendix A. The judgment of the district court was entered on January 19, 2000, Appendix C.

STATEMENT OF JURISDICTION

This court has jurisdiction over this appeal pursuant to 28 U.S.C Section 1254(1).

STATUTORY PROVISION INVOLVED

Title VII of the Civil Rights of 1964 provides: "[i]t shall be an unlawful employment practice for an employer… to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin." 42 USC Section 2000e2(a)(1).

STATEMENT OF CASE

Appellant filed her civil action in Bibb County Superior Court pursuant to 42 USC Sections 1983, 1985(3), 1988, 2000 et seq., Title IX of the Education Amendment of 1972, 20 USC Sections 1681 et seq., the First, Fourth, and Fourteenth Amendments to the United States Constitution and OCGA Section 51-1-1. Upon the request of the respondents, the case was removed to the U.S. Middle Court of Georgia.

The trial court granted the respondents summary judgment on petitioner's 1983 due process, free speech and privacy claims. Summary judgment was denied on appellant's Title VII sexual harassment and retaliation claims, 1983 equal protection claims and state tort claims.

During the trial in this case, the court charged the jury on sexual harassment as follows:

The defendant, Bibb County School District, the employer is responsible or liable for the actions of plaintiff's supervisor in plaintiff's claim of sexual harassment, if plaintiff proves by a preponderance of the evidence that, first Dr. Hodges, the plaintiff's supervisor, made intentional sexual advances to the plaintiff, and next, that the sexual advances were unwelcomed by the plaintiff. Third, the acceptance or rejection of the sexual advances were an express or implied condition or the receipt of a job benefit or the imposition of a tangible job detriment. And fourth, the plaintiff's reaction to these supervisor's advances, in fact affected a tangible aspect of her employment.

.....

The plaintiff alleges that she has been forced into a hostile work environment because of sexual harassment. To prevail on such a theory, the plaintiff need not—

excuse me. The plaintiff does not need to demonstrate that any substantial job benefits either were conditioned on submitting to hostile sexual harassment or were denied because of refusing to give into such conduct. Rather, to establish a claim of hostile environment sexual harassment, the plaintiff must prove by a preponderance of evidence that her workplace was permeated with discriminatory intimidation, ridicule and insult that is sufficiently severe or pervasive to alter the conditions of her employment and create an abusive working environment

.....

If you find that the plaintiff has proved all of the necessary elements of her hostile work environment sexual harassment claim, then the defendant, Bibb County School District is liable to the plaintiff, unless you find that said employer proved by a preponderance of the evidence that it exercised care to prevent and correct promptly any sexually

harassing behavior. And that the plaintiff, employee, unreasonably failed to take preventive or corrective opportunities provided by the employer or to avoid harm otherwise.

Petitioner maintained during the trial that her supervisor touched her on her buttock on two occasions, attempted to kiss her lips, placed his hand on her blouse and attempted to undress her in her school office, phoned the school and told her to come and join him in bed and searched the city of Macon for petitioner when she was on leave from work. Petitioner also maintained that her principal told her that she could "resign", "put out" or "be terminated" when she rejected his sexual advances. Petitioner was given an unfavorable performance evaluation, suspended from her employment and terminated because she rejected her

supervisor's sexual advances and reported his sexual misconduct to his supervisors.

The jury was misled by the erroneous charge on sexual harassment and returned a verdict in favor of the respondents. The appellate court affirmed the trial court's erroneous sexual harassment standard without an explanation.

REASONS FOR GRANTING THE WRIT

This Court has affirmed the principle that Title VII sexual harassment claim is directed at "discrimination because of sex." Oncale v. Sundowner Offshore Services, Inc., 523 U.S. 75 (1998). The Court also held that the "gravamen of any sexual harassment claim is that the alleged sexual advances were 'unwelcome'." Meritor Savings Bank v.

Vinson, 477 U.S. 57 (1982). The Court further held that an "employer is subject to vicarious liability to a victimized employee for an actionable hostile environment created by a supervisor with immediate (or successively higher) authority over the employee." Faragher v. City of Boca Raton, 524 U.S. 755 (1998). The Court also held "When no tangible employment action is taken, a defending employer may raise an affirmative defense to liability or damages subject to proof by a preponderance of the evidence." Id. The Court further held "No affirmative defense is available, however, when the supervisor's harassment culminates in a tangible employment action, such as discharge, demotion, or undesirable reassignment."

The trial court's jury charge was

contrary to Oncale and Meritor Savings Bank because it omitted the essential elements "subject to unwelcome harassment" and harassment must have been based on the sex of the employee". The charge was contrary to Faragher because it permitted the jury to consider the affirmative defense when the undisputed evidence clearly showed that petitioner was subjected to adverse tangible employment action, including but limited to undesirable reassignments, demotion and termination.

CONCLUSION

WHEREFORE, petitioner respectfully urges this court to grant her petition for writ of certiorari and direct the appellate and trial courts and apply the sexual harassment standard established by this Court.

This 20th day of March, 2002

Brenda G. Taylor

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APPENDIX A

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

Nos. 00-10900-EE, 00-11694-EE, and 00-12440-EE

Filed Oct. 5, 2001

BRENDA G. TAYLOR,

Plaintiff-Appellant,

versus

JAMES W. HODGES,
GENE BUINGER,
BIBB COUNTY PUBLIC SCHOOLS,

Defendants-Appellees.

On Appeal from the United States Court
for the Middle District of Georgia

ON PETITION(S)FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC

(Opinion_____, 11th Cir., 19___, ___F.2d____).

Before: TJOFLAT, DUBINA and DUHE*, Circuit Judges.

PER CURIAM:

The Petition (s) for Rehearing are DENIED and no member of this panel nor other Judge in regular active service on the Court having requested that the Court be polled on rehearing En banc (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 35-5), the Petition (s) for Rehearing En Banc are DENIED.

ENTERED FOR THE COURT:

_____Signed_____

UNITED STATES CIRCUIT JUDGE

*Honorable John M. Duhe, Jr., U.S. Circuit Judge for the Fifth Circuit, sitting by designation.

APPENDIX B

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

Nos. 00-10900, 00-11694 & 00-12440

District Court Docket No.
99-00093-CV-DF-5-4

Filed Jul 24, 2001

BRENDA G. TAYLOR,

Plaintiff-Appellant,

versus

JAMES W. HODGES, individually
and in his official capacity as
principal, GENE BUINGER, individually
and in his official capacity as
superintendent, BIBB COUNTY
PUBLIC SCHOOLS,

Defendants-Appellees.

Appeals from the United States Court
for the Middle District of Georgia

JUDGMENT

It is hereby ordered, adjudged, and decreed that the attached 11th Cir. R.36-1 affirmance without opinion, included herein by reference, is entered as the judgment of this Court.

Entered: July 24, 2001
For the Court: Thomas K. Kahn, Clerk
By: McCombs, Elaine

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

Nos. 00-10900, 00-11694, and 00-1240

District Court Docket No.
99-00093 CV-DF-5-4
Filed July 24, 2001

BRENDA G. TAYLOR,

Plaintiff-Appellant,

versus

JAMES W. HODGES, individually
and in his official capacity as
principal, GENE BUINGER, individually
and in his official capacity as
superintendent, BIBB COUNTY PUBLIC
SCHOOLS,

Defendants-Appellees.

Appeals from the United States Court
for the Middle District of Georgia

(July 24, 2001)

Before TJOFLAT, DUBINA AND DUHE*, Circuit Judges.

PER CURIAM:

AFFIRMED. See 11th Cir. R. 36-1
(Footnote omitted)

A True Copy - Attested
Clerk, U.S. Court of Appeals
Eleventh Circuit

By: _____
Deputy Clerk
Atlanta, Georgia

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*Honorable John M. Duhe, Jr., U.S. Circuit Judge for the Fifth Circuit, sitting by designation.

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

Filed Jan 19 2000

BRENDA G. TAYLOR,
Plaintiff,

v. C.A.NO. 5:99-CV-93-4(DF)

JAMES W. HODGES, et al.,1
Defendants.
Civil Order File Volume 76, Page 7647

J U D G M E N T

Pursuant to the Jury Verdict dated and filed January 18, 2000,JUDGMENT is hereby entered in favor of Defendants' and against Plaintiff.

This 17th day of January, 2000.

GREGORY J.LEONARD,CLERK

Amy Sanders, Deputy Clerk